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Larry L. Youngberg; David L. Wilkinson;

Recommended Citation

Brief of Appellant, *Youngberg v. Industrial Commission of Utah*, No. 18238 (Utah Supreme Court, 1982).
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IN THE SUPREME COURT OF THE STATE OF UTAH

LARRY L. YOUNGBERG

Petitioner,

vs.

THE INDUSTRIAL COMMISSION

OF UTAH, DEPARTMENT OF

EMPLOYMENT SECURITY,

Respondent.

Case No. I8238

BRIEF OF PETITIONER

Writ of Review from decision of the Board of Review, The Industrial
Commission of Utah, Department of Employment Security,

LARRY L. YOUNGBERG
Petitioner
Box 273 Kamas, Utah 84036

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NATURE OF THE CASE

This Case involves a determination by the Department of Employment Security which resulted in the petitioner being denied unemployment compensation benefits.

DISPOSITION OF BOARD OF REVIEW

ON December 1, 1981, the appeals referee of the Department of Employment Security for the State of Utah rendered a decision denying unemployment compensation benefits to the appellant Larry L. Youngberg. On January 29, 1982 the Board of Review issued a decision in this matter affirming the decision of the Appeal Referee which denied benefits to the claimant. On February 3, 1982 the claimant, Larry L. Youngberg, petitioned the Board of Review to reconsider its decision. The petition for reconsideration requested that the employer, Kennecott Minerals, be subpoenaed for records of leave of absences of personnel. It was also requested that records be subpoenaed concerning Doug Haun a coworker to Youngberg. This request was denied and the Board of Review declined to reconsider its prior decision thereby denying unemployment compensation to Youngberg.

RELIEF SOUGHT ON APPEAL

Petitioner, Larry L. Youngberg, seeks a reversal of the decision of the Board of Review and that unemployment compensation be granted from the date of origion filing.

STATEMENT OF FACTS

Youngberg began inquiries about obtaining a leave of absence in May of 1981. When inquiries were first made by Youngberg in May of 1981 he was transferred by Malcolm Robertson the Department Scheduling Clerk to a party who identified themselves as being the secretary to Mr. Bogdin who is the Rail Haulage Department Head of the Bingham Canyon Mine for the Utah Division of Kennecott Minerals Company.

Bogdins secretary then informed Youngberg that since he was granted a leave of absence in 1966 to travel overseas on that he did not see how they could deny him one currently.0038

Even though Youngberg was then working on the night shift all such matters would have to be processed by the day clerk, primarily by Robertson. Youngberg was told by Robertson that if the department head Mr. Bogdin approved the leave request then it should go through that Bogdin would have the main say, although it would have to go through the chain of command. 0044

On or about the 1st of July of 1981 Youngberg submitted the leave request form as prescribed by company policy on such matters. Mr. Bogdin signed the Leave request adding the comments "This type of leave has been historically granted approved" subsequently the leave request form went to Mr. Sharp the Mine Employee Relations Supervisor who also signed and approved the leave request. From there the request went to Mr. Carlsons office who is the Mine Superintendent. Youngberg then recieved word that Carlson had denied the request. Youngberg then went to Carlsons office and explained the circumstances of his leave request. Youngberg informed Carlson that one the very same day that they were talking that a switchtender was being cut off from switches and that by retaining this employee in that capacity during the duration of the leave request would not inconvenience the company. Carlson said he was not aware of that but that he would check into it and would give further consideration to the leave request.0040, 0041. Youngberg was encouraged by his meeting with Carlson and felt that he had answered Carlsons objections and thereby proceeded with his plans. Tickets were purchased to go overseas on July 14, 1981. That same night after having had purchased his tickets Youngberg was

given notice that his leave request had been denied. 0050

Doug Haun a fellow switchman to Youngberg, out of a total of about fifteen, had recently returned from a leave of absence to go over to Denver and check things out and to arrange housing as he had been hired by American Oil to work for them out of there Denver office. He was soon going to quit his job with Kennecott and take up residence in Denver. 0043

It was Youngbergs understanding that his very next door neighbor in Magna was currently on a leave of absence for the purpose of building his new house. 0050

The hearing conducted on November 24, 1981 at the Utah Department of Employment Security at 1234 S. Main Salt Lake City, Utah was conducted in a small confining room with Youngberg representing himself, the hearing examiner Mr. Barnes the three parties subpoenaed to appear and three other representatives from Kennecott or a total of six Kennecott supervisory personnel This would tend to have a psychologically intimidating effect upon Youngberg or on anyother party in similar circumstances. 0032

Mr. John R. Shields the Personnel Administrator, Utah Copper Unit gave testimony to the hearing examiner that the case concerning the discharge or termination of Youngberg was in the grievance procedure and had not yet been determined. Some time after the hearing on November 24, 1981 Youngberg recieved notice from the union that the company would not allow him to come back to work. 0036

On February 3, 1982 Youngberg petitioned the Board of Review for the Department of Employment Security for the state of Utah to subpoena Kennecott Minerals for information on records of leaves of

absences and for records from American Oil as to when Doug Haun was hired by them or when a job was committed to him. This request was denied on the grounds that the information requested should have been requested at the time of the hearing. Youngberg had no knowledge of what Kennecott representatives would say at the hearing and therefore could not have made such a request until after the hearing.

Millard Niksich had been on Youngberg's back and Youngberg felt it was unusual and out of normal circumstances that Niksich should be the one to bring down the final decision telling Youngberg that he could not go. Youngberg contends that Niksich was an antagonist who had been directed to pressure him into circumstances and unusual pressures were brought to bear so that Youngberg would feel compelled to complete his trip as he had been planning. 0052

The hearing was conducted in a hurried and haphazard fashion and Youngberg was not given adequate opportunity to cross examine the witnesses particularly Carlson. 0043 It is the appellants contention that Carlsons memory improved a great deal with cross examination and that it could have been further substantiated that Carlson was a key figure in helping to set Youngberg up.

ARGUMENT

POINT I

Through conversations with Robertson and other company personnel Youngberg was given encouragement on several occasions that he could expect to be granted a leave request for the purpose of overseas travel.

POINT II

Bogdin the head of the department in which Youngberg worked approved the leave request with the comments "This type of leave has been historically granted approved". Youngberg was told that although it would have to go through the chain of command that Bogdin would have the main say. That if he approved it that it should go through.

POINT III

The circumstances of others working with or living near Youngberg who were presently on or who had recently been granted leaves of absences is in clear contradiction to the testimony of Carlson.

POINT IV

The hearing was conducted in confined quarters where six hostile company personnel present had a psychologically intimidating effect upon Youngberg.

POINT V

Youngberg was denied access to records that would have substantiated his contentions that he was set up. Furthermore Youngberg could not have requested such information at the time of the hearing on November 24, 1981. as he had no knowledge before hand as to what testimony would be given by company representatives. HIR 1000 1

POINT VI

Shields gave testimony before the hearing examiner that the case concerning the discharge or termination of Youngberg concerning his employment with Kennecott was in the grievance procedure and was pending an answer at that step. This would

tend to influence the hearing examiner toward denying benefits for unemployment compensation since his job status with the company was currently under review through the grievance procedure.

POINT VII

Doug Haun a fellow switchtender to Youngberg out of a total of fifteen had recently returned from a leave of absence and was soon going to leave employment with Kennecott.

POINT VIII

Unusual pressures and harassments were being placed on Youngberg so that he would feel compelled to complete his travel plans. Company personnel were abusing Youngbergs seniority rights in the placement of job assignments at the mine.

POINT IX

The appealant was not given proper time and consideration to cross examine the witnesses, Carlson in particular.

POINT X

The contradictory nature of Carlsons testimony would at the very least test the imagination of any impartial observer as to his credibility. Close examination of the changing character of his testimony would have to leave many unanswered questions therefore the board acted arbitrarily, capriciously and unreasonably in denying Youngberg benefits.

CONCLUSION

- I. Youngberg was encouraged to proceed with his leave request with the expectation that it would be granted.
2. The department head approved the leave request with the comments "This type of leave has been historically granted".
3. Others working with and living next door to Youngberg had recently been on leave requests.
4. The confining quarters of the small hearing room where six hostile company representatives were present had an intimidating effect on Youngberg.
5. The truthfulness of Youngberg's testimony could be verified by information requested which evidence he was denied access to.
6. The hearing examiner was unduly swayed by testimony that Youngberg's employment status was under review.
7. A fellow switchtender to Youngberg had recently returned from a leave of absence.
8. Unusual pressures were placed on Youngberg by company personnel so as to compel him to go through with his travel plans.
9. Time for sufficient cross examination was not allowed.
10. The board acted arbitrarily, capriciously, and unreasonably.

MAILING CERTIFICATE

I hereby certify that I mailed two true and correct
copies of the foregoing Brief of Petitioner to David L. Wilkinson,
Attorney General, State Capitol, Salt Lake City, Utah 84114,
and to Floyd G. Astin and K. Allan Zabel, Special Assistants
Attorney General, The Industrial Commission Of Utah, Department
of Employment Security, 174 Social Hall Avenue, Salt Lake City
Utah 84147, postage prepaid, on this ----day of August, 1982.
